Bulletin No. 1997–29
July 21, 1997

Internal Revenue bulletin

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

T.D. 8722, page 4.
REG-104893–97, page 13.

Temporary and proposed regulations under section 894 of the Code relate to eligibility for benefits under income tax treaties for payments to entities. The regulations set forth rules for determining whether U.S. source payments made to entities are eligible for treaty-reduced tax rates. A public hearing on the proposed regulations will be held on September 24, 1997.

EMPLOYEE PLANS

Announcement 97–70, page 14.

This announcement describes certain transition relief to the minimum distribution rules of section 401(a)(9)(C) of the Code as amended by section 1404 of the Small Business Job Protection Act of 1996.

EXEMPT ORGANIZATIONS

Announcement 97–72, page 15.

A list is provided of organizations that no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

ADMINISTRATIVE

Notice 97–42, page 12.

This notice modifies the guidance set forth in Notice 97–18, 1997–10 I.R.B. 35, regarding the time for reporting certain transfers under section 1491 of the Code.

Announcement 97–61, page 13.

This announcement publicizes a Competent Authority agreement executed between the United States and France to resolve a double taxation issue. The announcement states the double taxation relief measures as provided under the agreement.

Announcement 97–71, page 15.

An updated edition of Publication 1542, Per Diem Rates, (revised May 1997), is now available.

Finding Lists begin on page 19.
Announcement of Disbarments and Suspensions begins on page 16.

Department of the Treasury
Internal Revenue Service

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service fied offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 894.—Income Affected by Treaty

26 CFR 1.894–1T: Income affected by treaty (temporary).

T.D. 8722

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Guidance Regarding Claims for Certain Income Tax Convention Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to eligibility for benefits under income tax treaties for payments to entities. The regulations set forth rules for determining whether U.S. source payments made to entities, including entities that are fiscally transparent in the United States and/or the applicable treaty jurisdiction, are eligible for treaty-reduced tax rates. The regulations affect the determination of tax treaty benefits with respect to U.S. source income of foreign persons. The text of these temporary regulations also serves as the text of REG–104893–97.

DATES: These regulations are effective July 2, 1997.

These regulations apply to amounts paid on or after January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Karzon, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the Income Tax Regulations (CFR part 1) under section 894 of the Internal Revenue Code (Code).

Explanation of Provisions

These regulations prescribe rules for determining whether U.S. source income paid to an entity is eligible for a reduced rate of U.S. tax under an income tax treaty. The regulations are designed principally to clarify the availability of treaty-reduced tax rates for a payment of U.S. source income to an entity that is treated as fiscally transparent, including a hybrid entity (i.e., an entity that is treated as fiscally transparent in either (but not both) the United States or the jurisdiction of residence of the person that seeks to claim treaty benefits).

The regulations address only the treatment of U.S. source income that is not effectively connected with the conduct of a U.S. trade or business. Treasury and the IRS may issue additional regulations addressing the availability of other tax treaty benefits, such as the application of business profits provisions, with respect to income of fiscally transparent entities.

Under the regulations, payments of U.S. source income to an entity that is treated as fiscally transparent for U.S. federal income tax purposes are eligible for reduced tax rates under a tax treaty between the United States and another jurisdiction (the applicable treaty jurisdiction) if the entity itself is a resident of the applicable treaty jurisdiction, or if, and only to the extent that, the interest holders of the entity are residents of the applicable treaty jurisdiction and the entity is treated as fiscally transparent for purposes of the tax laws of such jurisdiction.

Accordingly, payments of U.S. source income to an entity that is treated as fiscally transparent for U.S. federal income tax purposes but as non-fiscally transparent for purposes of the tax laws of the applicable treaty jurisdiction are not eligible for a treaty-reduced tax rate under the relevant treaty unless the entity itself is a resident of the applicable treaty jurisdiction. Conversely, under the regulations, a payment of U.S. source income to an entity that is treated as non-fiscally transparent for U.S. federal income tax purposes (other than a domestic corporation) is eligible for a reduced tax rate under the relevant treaty if the entity itself is a resident of the applicable treaty jurisdiction or if, and only to the extent that, interest holders of the entity are residents of the applicable treaty jurisdiction and the entity is treated as fiscally transparent for purposes of the tax laws of such jurisdiction.

Under these temporary regulations, an entity is treated as fiscally transparent by a jurisdiction only if the jurisdiction requires interest holders in the entity to take into account separately their respective shares of the various items of income of the entity on a current basis and to determine the character of such items as if such items were realized directly from the source from which realized by the entity (for purposes of the tax laws of the jurisdiction). Accordingly, entities treated as fiscally transparent by a jurisdiction are entities subject in that jurisdiction to rules analogous to the U.S. rules applicable to entities that are treated as partnerships for U.S. federal income tax purposes.

These regulations are consistent with U.S. tax treaty obligations and basic tax treaty principles. The regulations as applied to hybrid entities are based on the principles discussed below. Treasury and the Service will continue to coordinate these issues with U.S. tax treaty partners in order to resolve any difficulty arising from the application of the principles set forth in these regulations.

Problems Arising From Dual Classification

The United States generally applies its tax rules to determine the classification of both domestic and foreign entities. When U.S. and foreign laws differ on classification principles, a hybrid entity may result. If income is paid to a hybrid entity, the entity may be considered as deriving the income under U.S. tax principles (e.g., as an association taxable as a corporation under U.S. tax principles), but its interest holders, rather than the entity, may be considered to derive the income under foreign tax principles (e.g., as an entity equivalent to a U.S. partnership). This dual classification may give rise to inappropriate and unintended results under tax treaties, such as double exemptions or double taxation, unless the tax treaties are interpreted so as to take into account the conflict of laws.

To avoid inappropriate and unintended tax treaty results with respect to payments to hybrid entities, these regulations rely on the basic principle that income tax treaties are designed to relieve double taxation or excessive taxation. This objective is generally achieved with provisions in treaties that limit the tax that a country may impose on income arising from sources

within its borders to the extent that the income is derived by a resident of a jurisdiction with which the source country has an income tax treaty in effect (an applicable treaty jurisdiction). However, the agreement by the source country to cede part or all of its taxation rights to the treaty partner is predicated on a mutual understanding that the treaty partner is asserting tax jurisdiction over the income. Stated simply, tax treaties contemplate that income relieved from taxation in the source country will be subject to tax in the treaty country. This principle is central to the interpretation of treaty provisions in determining the extent to which payments received by a hybrid entity are eligible for benefits under tax treaties. Some treaties have specific rules reflecting this principle that are helpful in deciding how the treaties should be applied in such cases. However, the lack of specific rules in a treaty does not suggest that this principle does not apply under that treaty.

In order to implement this principle, virtually all U.S. income tax treaties limit the eligibility for treaty benefits on the condition that the person deriving the income must be a resident of the applicable treaty country. Typical of this condition, for example, is Article 12 of the U.S.–German treaty, which provides that "Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State." Sometimes, the term *paid to* is used instead of the term *derived by*. However, those terms are used interchangeably and a different choice of words does not indicate that a different result is intended. Generally, a resident is defined as a person who is liable to tax in the treaty country as a resident of that country. See, for example, Article 4.1 of the U.S.–German tax convention, which provides that "the term 'resident of a Contracting State' means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature ...."

Limiting eligibility for treaty benefits to residents provides assurance to the source country that, when it limits its taxation rights on income arising from within its borders, it does so with the expectation that the income derived by a resident of the treaty country is subject to tax in the residence country.

Application of Principle to Hybrid Entities Generally

Based on the typical residence provisions of U.S. tax treaties, if income is paid to an entity that is treated as fiscally transparent in the treaty country in which it is organized, the entity itself is not eligible for benefits under the applicable treaty because it is not a resident of the treaty country (i.e., by virtue of not being liable to tax in that country). Whether the entity is a resident of the treaty country is determined under the laws of that country and not under the laws of the source country. This observation is important if the entity is a hybrid (i.e., an entity that is treated as fiscally transparent in one jurisdiction and treated as non-fiscally transparent in another jurisdiction). If the entity, treated as fiscally transparent in the treaty country, is treated as a taxable entity in the source country, the entity is considered by the source country as being liable to tax. However, this determination under the source country tax laws does not render the entity a resident of the treaty country. In order for the entity to be a resident of the treaty country, it must be liable to tax in that country, as determined under the laws of that country.

Where the entity is not eligible for treaty benefits (for lack of residence in the treaty country), there is a question as to whether the owners of the entity may be eligible for benefits under an applicable income tax treaty. As stated above, the guiding principle is that income is eligible for a rate reduction or an exemption in the source country if "derived by" or "paid to" a resident of that country. Where the entity is treated as fiscally transparent, the question is whether the income can be considered "derived by" or "paid to" the owner of the entity.

If the entity is treated as fiscally transparent by all tax jurisdictions involved (i.e., the source country, the country where the entity is organized, and the country where the owners are resident), it is well established under U.S. income tax treaties that the entity is ignored and a look-through approach is intended, with the result that the entity's owners are treated as the persons who derive the income. This result is consistent with the general principle that eligibility for treaty benefits is conditioned upon the income being subject to tax in the treaty country as the income of a resident of that country. In fact, some treaties clarify this point. For example, Article 4.1(b) of the U.S.–German income tax convention provides, like several other U.S. tax conventions, that "in the case of income derived or paid by a partnership, estate, or trust, this term [resident] applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State [the State other than the source State] as the income of a resident, either in its hands or in the hands of its partners or beneficiaries." Further, even where no provisions are included, the Technical Explanation sometimes explains that the look-through rule applies without the need for a specific provision. See the U.S. Treasury Department's Technical Explanation of U.S.–Japan Income Tax Convention signed March 8, 1971, Article 3 (Fiscal Domicile).

Application of Principle to Reverse Hybrid Entity

If an entity is a "reverse" hybrid entity, meaning that it is treated as a taxable entity under the tax laws of the source country but as a fiscally transparent entity in the applicable treaty country, a conflict arises because, under the source country's tax laws, the entity's owners are not treated as deriving the income. Yet, under the tax laws of the jurisdiction where the entity's owners are resident, the owners are treated as deriving the income paid to the entity. Thus, the question is whether the source country's laws or the laws of each owner's jurisdiction of residence should govern the determination of who is the person deriving the income for tax treaty purposes. Making that determination under the tax laws of the applicable treaty jurisdiction where the owners are resident leads to results consistent with the principle discussed earlier that the source country cedes its tax jurisdiction to the treaty partner based on the understanding that the treaty partner asserts tax jurisdiction over the income by insuring that it is taxable in the hands of a resident. In this case, the entity's owners are resident in a treaty country that treats them as liable to tax on the items of income paid to the entity. On the other hand, applying the tax laws of the source country would lead to results inconsistent with that principle. In other words, tax benefits would

be denied under the applicable treaty (because, under the source country's tax laws, the entity's owners are not treated as deriving the income paid to the entity), even though the income arising in the source country is subject to tax in the hands of persons who are resident in the applicable treaty jurisdiction.

Application of Principle to Regular Hybrid Entity

The same principle applies to a "regular" hybrid entity, i.e., an entity that is treated as fiscally transparent in the source country and as a non-fiscally transparent entity in the applicable treaty jurisdiction. If the entity is organized in a treaty jurisdiction, the applicable treaty with that country generally would treat the entity as a resident. Therefore, under that treaty, the entity should be eligible for treaty benefits as an entity deriving the income as a resident of the treaty jurisdiction. On the other hand, the entity's owners who are resident in that jurisdiction (or in any other jurisdiction that treats the entity as non-fiscally transparent) should not be eligible for treaty benefits under that treaty (or a treaty with the country where they are resident that treats the entity as non-fiscally transparent). This result should occur irrespective of the fact that the source country considers that the taxpayers with respect to the income are the entity's owners and not the entity (by virtue of treating the entity as fiscally transparent under its own tax laws). Again, applying the laws of the applicable treaty jurisdiction to determine whether the entity or its owners are deriving the income as residents of that country leads to results consistent with the basic principle that the source country cedes its tax jurisdiction over income to the extent the income is subject to tax in the hands of a resident of the applicable treaty country.

Applying the tax laws of the source country to determine the person deriving the income for treaty purposes would not only be inconsistent with the basic principle that income should be treated as derived by the person in the treaty country who is liable to tax on that income, it also potentially leads to tax avoidance under tax conventions, including an inappropriate double exemption. For example, if the entity does not fall within the taxing jurisdiction of the applicable treaty jurisdiction (e.g., because the entity is organized in a third country or as a fiscally transparent entity in the source country), the income could be eligible for a treaty-reduced tax rate in the source country and yet not be subject to tax in the jurisdiction where the owners are resident.

In such a case, the owners may eventually be taxed on the income when the entity makes a distribution of the income derived from the source country. The Treasury and IRS believe that the potential for later taxation should not affect the results under the treaty for two reasons: first, the interposition of a hybrid entity between the income and the owner of the entity allows the taxation event in the treaty jurisdiction to be deferred, perhaps indefinitely; second, the income, when distributed or deemed distributed (for example, pursuant to anti-deferral rules of the treaty jurisdiction), may be transformed. In other words, the income derived by the partner will be treated in the partner's residence country as a distribution (or deemed distribution) of profits from the entity and not as the type of income derived by the entity from the source country. This disparity in treatment may lead to a double exemption if, for example, the dividend distribution is exempt from tax in the country where the entity's owners reside due to double tax relief or a corporate integration regime that grants preferential tax treatment to corporate distributions. Interpreting conventions in a way that allows such a double exemption would not be consistent with the primary goal of treaties to relieve double or excessive taxation. This is especially true where, as is the case here, an alternative interpretation exists that would produce results consistent with basic tax convention principles.

Certain taxpayers have expressed the view that this analysis of the treatment of payments to hybrid entities under tax treaties is inconsistent with the treatment of so-called hybrid securities that are treated differently under the tax laws of the source country and the relevant treaty jurisdiction (e.g., an instrument that is treated as a debt instrument in the source country but as an equity interest in the relevant treaty jurisdiction). In certain cases, the use of hybrid securities can lead to double exemptions, analogous to the double exemptions possible with respect to "regular" hybrid entities, based on the availability of an exemption from tax in the relevant treaty jurisdiction. Treasury and the IRS recognize that hybrid securities can produce inappropriate and unintended results under income tax treaties. Although the residence concept of tax treaties, which incorporates the basic "subject to tax" principle, generally is satisfied with respect to payments on a hybrid security for the reasons discussed above, Treasury and the IRS are considering whether inappropriate and unintended tax treaty consequences, including both double exemptions and double taxation, can arise with respect to hybrid securities and, if so, what alternative avenues exist for addressing them.

The hybrid entity analysis applies regardless of where the entity is organized and where the owners are resident. One example involves an entity organized in one country and owned by persons residing in a third country. If the third country and the source country treat the entity as fiscally transparent, both the source country and the third country can ignore the entity for purposes of granting treaty benefits under the third country's convention with the source country. In such a case, the entity's owners resident in the third country are treated as deriving the income received by the entity, under both the source country tax laws and the tax laws of the third country. In a three-country situation, there may also be simultaneous application of two treaties to the same flow of income: the treaty with the country where the entity is organized, and the treaty with the country where the entity's owners are resident.

The analysis applicable to fiscally transparent entities does not depend on whether the entity has multiple owners or a single owner. Accordingly, the analysis applies to a wholly-owned entity that is disregarded for federal tax purposes as an entity separate from its owner.

Application of Principle to Entity Organized in Source Country

The same analysis generally applies to entities organized in the source country. If both the source country and the treaty jurisdiction where the entity's owners are resident treat the entity as fiscally transparent, then the entity is ignored and the eligibility for treaty benefits is tested at the owners' level. If the entity, however, is treated as non-fiscally transparent in the

treaty jurisdiction, then the income is not treated by the treaty jurisdiction as being derived by the owners. Therefore, the owners are not eligible for benefits under the treaty since they are not deriving the income for purposes of the applicable treaty.

Taxpayers may argue that treaty benefits should be allowed to the owners residing in the treaty country because, viewed from the source country's point of view, the owners are deriving the income from the source country and are resident in the treaty country. While the provisions in current treaties do not explicitly provide for this situation, the situation raises exactly the same issues as in the cases discussed above. For this purpose, it is immaterial that the entity is organized in the country of the owner, in a third country, or in the source country.

The analysis does not apply, however, if the entity is a reverse hybrid organized in the United States because, in such a case, the United States treats the entity as a corporate entity, liable to tax in the United States at the entity level. The right of the United States to tax a domestic corporation is established under the "savings clause" of all U.S. tax treaties which preserves the right of the United States to tax its residents and citizens under its domestic law. Distributions from a domestic corporation that is a reverse hybrid are also subject to U.S. tax in the hands of the foreign owners who are treated as shareholders for U.S. tax purposes.

Beneficial Ownership

The principles relied upon in these temporary regulations are consistent with the proposed withholding tax regulations issued under §§1.1441–1(c)(6)(ii)(B) and 1.1441–6(b)(4) regarding claims of treaty-reduced withholding rates for U.S. source payments through foreign entities. The temporary regulations, however, do not utilize the same terminology as the proposed withholding tax regulations.

The proposed withholding tax regulations condition eligibility for treaty-based withholding rates for payments to an entity on a determination of "beneficial owner" status for the entity or the interest holders of the entity pursuant to the laws of the applicable treaty jurisdiction. Accordingly, under the proposed withholding tax regulations, the term *beneficial owner* functions as a surrogate for the principle that a person is eligible for tax treaty benefits with respect to a payment received by an entity only if the person is a resident with respect to such payment.

The term *beneficial owner* as used in the proposed withholding tax regulations may be confusing because this term has other meaning in the tax treaty context. Accordingly, the temporary regulations do not utilize the term *beneficial owner* in the same manner as the proposed withholding regulations. Rather, they condition eligibility for treaty-reduced tax rates for income paid to an entity on a determination that the income is "treated as derived by a resident" of the applicable treaty jurisdiction. Like the determination of beneficial owner status required in the proposed withholding tax regulations, the determination of whether a payment to an entity is "treated as derived by a resident" is determined under the principles in effect under the laws of the applicable treaty jurisdiction. Treasury and the Service intend to conform the final withholding tax regulations to the temporary regulations.

The temporary regulations reflect the fact that the concept of beneficial ownership is an important separate condition for claiming tax treaty benefits. In order to address difficulties where the recipient acts as a "nominee" or "conduit" for another person or in other situations involving a disconnect between legal and economic ownership, most income tax treaties require that the resident be a beneficial owner of the income. This requirement is entirely separate from the beneficial ownership requirement with respect to U.S. source payments to foreign entities reflected in the proposed withholding tax regulations and the residence requirement with respect to U.S. source payments to all entities reflected in these temporary regulations. As used in tax treaties, the term *beneficial owner* is meant to address "conduit", "nominee" and comparable situations in which the person receives the payment in form (and may even be taxed on that income in the jurisdiction in which it resides), but is nevertheless not treated as beneficially owning the income for purposes of a particular treaty because, under the beneficial owner rules of the source country, the income is deemed to belong to another person who is determined to have a stronger economic nexus to the income. See, for example, section 7701(l) and §§1.7701-(l)–1(b) and 1.881–3. Thus, the temporary regulations utilize the term *beneficial owner* in a manner consistent with the treaty approach.

Mutual Agreement

Treasury and IRS intend that the principles of the regulations should be applied in a reciprocal manner by U.S. tax treaty partners. For this reason, the regulations include a special rule that provides that, irrespective of any contrary rules in the regulations, a reduced rate under a tax treaty for a payment of U.S. source income will not be available to the extent that the applicable treaty partner does not grant a reduced rate under the tax treaty to a U.S. resident in similar circumstances, as evidenced by a mutual agreement between the relevant competent authorities or a public notice of the treaty partner. Denial of benefits under this provision would be effective on a prospective basis only.

Effective Date

The temporary regulations apply on a prospective basis only to amounts paid on or after January 1, 1998. Withholding agents should consider the effect of these regulations on their withholding obligations, including the need to obtain a new withholding certificate to confirm claims of treaty benefits for payments made on or after the effective date. Treasury and the IRS recognize that the applicable principles for determining eligibility of reduced treaty rates for income paid to hybrid entities may have been uncertain in the past. Accordingly, the IRS does not intend to challenge any claim of treaty benefits for payments to hybrid entities made before the effective date of these regulations on the basis that the claim was based on principles inconsistent with those upon which these regulations are based.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Pro-

cedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Because of rapidly increasing use of hybrid entities for cross-border transactions, immediate guidance is needed on rules for determining whether U.S. source payments made to entities, including entities that are fiscally transparent in the United States and/or the applicable treaty jurisdiction, are eligible for treaty-reduced tax rates. Therefore, good cause is found to dispense with the notice requirement of section 553(b) of the Administrative Procedure Act. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, CFR 26 part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. §1.894–1T is added to read as follows:

§1.894–1T: Income affected by treaty (temporary).

(a) through (c) [Reserved]. For further guidance, see §1.894–1(a) through (c).

(d) *Determination of tax on income paid to entities*—(1) *In general*. The tax imposed by sections 871(a), 881(a), 1461, and 4948(a) on a payment received by an entity organized in any country (including the United States) shall be eligible for reduction under the terms of an income tax treaty to which the United States is a party if such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner of the payment, and all other applicable requirements for benefits under the treaty are satisfied. A payment received by an entity is treated as derived by a resident of an applicable treaty jurisdiction only to the extent the payment is subject to tax in the hands of a resident of such jurisdiction. For this purpose, a payment received by an entity that is treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in thehands of a resident of the jurisdiction only to the extent that the interest holders in the entity are residents of the jurisdiction. For purposes of the preceding sentence, interest holders shall not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities by the applicable treaty jurisdiction. A payment received by an entity that is not treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of such jurisdiction only if the entity is itself a resident of that jurisdiction.

(2) *Application of beneficial ownership requirement in respect of certain payments received by entities—(i) Entities treated as fiscally transparent for U.S. tax purposes.* An entity that is treated as fiscally transparent under the laws of the United States and that is resident in an applicable treaty jurisdiction shall be treated as the beneficial owner of a payment if the entity would be treated as the beneficial owner if it were treated as nonfiscally transparent by the United States.

(ii) *Entity's owners as beneficial owners*—(A) A resident of an applicable treaty jurisdiction that derives a payment received by an entity that is fiscally transparent under the laws of the applicable tax jurisdiction shall be treated as the beneficial owner of the payment unless—

(*1*) Such resident would not have been treated as the beneficial owner of the payment had such payment been received directly by the resident; or

(*2*) The entity receiving the payment is not treated as a beneficial owner of the payment.

(B) For example, persons residing in treaty Country X and treated under the laws of Country X as interest holders in a fiscally transparent entity created under the laws of Country Y are treated as the beneficial owners of the payments received by the entity from sources within the United States unless the interest holders would not have been treated as beneficial owners had they received the payment directly (e.g., the partners act as nominees or conduits for other persons). However, if the entity itself is acting as a nominee or conduit for another person and, therefore, is not itself a beneficial owner, then none of the interest holders can be treated as beneficial owners, even if the interest holders own their interests in the entity as beneficial owners. For this purpose, the determination of whether a person is a beneficial owner of a payment shall be made under U.S. tax laws.

(3) *Application to certain domestic entities*. Notwithstanding paragraph (d)(1) of this section, an income tax treaty may not apply to reduce the amount of tax on income received by an entity that is treated as a domestic corporation for U.S. tax purposes. Therefore, neither the domestic corporation nor its shareholders are entitled to the benefits of a reduction of U.S. income tax on income received from U.S. sources by the corporation.

(4) *Definitions*—(i) *Entity.* For purposes of this paragraph (d), the term *entity* shall mean any person that is treated by the United States or the applicable treaty jurisdiction as other than an individual.

(ii) *Fiscally transparent*. For purposes of this paragraph (d), an entity is treated as *fiscally transparent* by a jurisdiction to the extent the jurisdiction requires interest holders in the entity to take into account separately on a current basis their respective shares of the items of income paid to the entity and to determine the character of such items as if such items were realized directly from the source from which realized by the entity (for purposes of the tax laws of the jurisdiction). Entities that are fiscally transparent for U.S. federal income tax purposes include partnerships, common trust funds described under section 584, simple trusts, grantor trusts, as well as certain other entities (including entities that have a single interest holder) that are treated as partnerships or as disregarded entities for U.S. federal income tax purposes.

(iii) *Applicable treaty jurisdiction.* The term *applicable treaty jurisdiction* means the jurisdiction whose income tax treaty with the United States is invoked for purposes of reducing the rate of tax imposed under section 871(a), 881(a), 1461, and 4948(a).

(iv) *Resident*. The term *resident* shall have the meaning assigned to such term in the applicable income tax treaty.

(5) *Application to all income tax treaties*. Unless otherwise explicitly agreed

upon in the text of an income tax treaty, the rules contained in this paragraph (d) shall apply in respect of all income tax treaties to which the United States is a party. However, a reduced rate under a tax treaty for a payment of U.S. source income will not be available irrespective of the provisions in this paragraph (d) to the extent that the applicable treaty partner would not grant a reduced rate under the tax treaty to a U.S. resident in similar circumstances, as evidenced by a mutual agreement between the relevant competent authorities or by a public notice of the treaty partner. The Internal Revenue Service shall announce the terms of any such mutual agreement or treaty partner's position. Any denial of tax treaty benefits as a consequence of such a mutual agreement or treaty partner's position shall affect only U.S. source payments made after announcement of the terms of the agreement or of the position.

(6) *Examples*. This paragraph (d) is illustrated by the following examples. Unless stated otherwise, each example assumes that all conditions for claiming a treaty-reduced tax rate under a U.S. income tax treaty with respect to a payment of U.S. source income are satisfied (other than the condition that the income is treated as derived by a resident of the applicable treaty jurisdiction), including the beneficial ownership requirement and all requirements relating to applicable limitation on benefits provisions. The examples are as follows:

Example 1. (i) *Facts*. Entity A is a business organization formed under the laws of Country X that has an income tax treaty with the United States. Under the laws of Country X, A is liable to tax at the entity level. A is treated as a partnership for U.S. income tax purposes and receives royalties from U.S. sources that are not effectively connected with the conduct of a trade or business in the United States. Some of A's partners are resident in Country X and the other partners are resident in Country Y. Country Y has no income tax treaty in effect with the United States. Article 12 of the U.S.–X tax treaty provides that "royalties derived from sources within a Contracting State by a resident of the other Contracting State shall not exceed 5 percent of the gross amount thereof...". Article 4.1 of the treaty provides that for purposes of the treaty, "a 'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature...". Article 4.2 of the treaty provides that in the case of income "derived or paid by a partnership...", the term *resident* applies only to the extent that the income derived by such partnership is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners.

(ii) *Analysis*. Under the U.S.–X income tax treaty, A is a *resident* of Country X within the meaning of Article 4.1 of the treaty. Also, as a resident of Country X taxable on the U.S. source royalty under the tax laws of Country X, A meets the condition under Article 12 of the treaty that it derive the income from sources within the United States. Accordingly, the U.S. source royalty income is treated as derived by a resident of X. Further, A is a beneficial owner of the royalty income, as determined under paragraph (d)(2)(i) of this section. The fact that A's interest holders are also beneficial owners of the royalty income under U.S. tax principles (as partners of A) does not preclude A from qualifying as a beneficial owner for purposes of the treaty. In addition, A may claim benefits under the U.S.–X income tax treaty even though some of its interest holders do not reside in X or reside in a country that does not have an income tax treaty in effect with the United States.

Example 2. (i) *Facts*. The facts are the same as under *Example 1* except that Article 12 of the U.S.–X income tax treaty provides that royalties "paid" to a resident of a treaty country from sources within the other may be taxed in both countries but the tax is limited to 10 percent of the gross amount of the royalties in the source country. Further the U.S.-X income tax treaty includes no provision relating to income paid or derived through a partnership.

(ii) *Analysis*. As in *Example 1*, A is entitled to claim the benefit of the U.S.-X income tax treaty with respect to the U.S. source royalty income paid to A. The term *paid* and the term *derived* are used interchangeably in U.S. income tax treaties. Accordingly, the U.S. source royalty income is treated as derived by a resident of X. It is irrelevant that the U.S.–X treaty does not include a provision relating to income paid or derived through a partnership.

Example 3. (i) *Facts*. The facts are the same as under *Example 2*, except that Country Y has an income tax treaty in effect with the United States. Article 12 of the U.S.–Y income tax treaty reduces the rate on U.S. source royalty income to zero if the income is paid to a resident of Country Y who beneficially owns the income. Article 4.1 of the U.S.–Y treaty provides that for purposes of the treaty, "a 'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature...". The U.S.–Y treaty does not include a provision relating to income paid or derived through a partnership. Under the laws of Country Y, A is treated as fiscally transparent entity. Thus, A's partner, T, a corporation organized in Country Y is required to include in income on a current basis its allocable share of A's income. T is a beneficial owner of the income paid to A, as determined under paragraph (d)(2)(ii) of this section.

(ii) *Analysis*. As in *Example 2*, A is entitled to claim the benefit of the U.S.–X income tax treaty with respect to the U.S. source royalty income paid to A. However, T is also entitled to claim the benefit of the exemption under the U.S.–Y treaty for its allocable share of the U.S. source royalty income. T meets the conditions of Article 12 because it is a resident of Country Y within the meaning of Article 4.1 of the treaty. Also, as a resident of Country Y taxable on the U.S. source royalty under the tax laws of Country Y, it meets the condition under Article 12 of the treaty that income from sources within the United States be paid to a resident. Accordingly, T's allocable share of the U.S. source royalty income is treated as derived by a resident of Y. It is irrelevant that the U.S.–Y treaty does not include a provision relating to income paid or derived through a partnership.

Example 4. (i) *Facts*. Entity A is a business organization organized under the laws of Country V that has no income tax treaty with the United States. A is treated as a partnership for U.S. tax purposes and receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States. G, one of A's interest holders, is a corporation organized under the laws of Country X. X treats A as an entity taxable at the entity level and not as a fiscally transparent entity. Therefore, G is not required to include in income on a current basis its share of A's income. Instead, G is taxed in X on its share of A's profits when distributed by A and such distribution is taxed to G as a dividend. H, A's other interest holder, is a corporation organized in Country Y. Y treats A as a fiscally transparent entity and requires H to include in income on a current basis its allocable share of A's income. Both X and Y have an income tax treaty in effect with the United States. Article 12 of the U.S.–X income tax treaty provides that royalties paid to a resident of a treaty country from sources within the other may be taxed in both countries but the tax is limited to 5 percent of the gross amount of the royalties in the source country. Article 4.1 of the U.S.–X treaty provides that for purposes of the treaty, a "'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature...". The U.S.–X treaty does not include a provision relating to income paid or derived through a partnership. Article 12 of the U.S.–Y treaty provides that "royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State." Article 4.1 of the U.S.–Y treaty provides that, for purposes of the treaty, a "'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature...". Article 4.2 of the U.S.–Y treaty provides that in the case of income "derived or paid by a partnership...", the term *resident* applies only to the extent that the income derived by such partnership is subject to tax in that State as the income of a resident, either, in its hands or in the hands of its partners.

(ii) *Analysis*. A may not claim the benefit of any income tax treaty since it is not a resident of a country with which the United States has such a treaty. This result occurs regardless of how A is treated for U.S. tax purposes or for purposes of the tax laws of Country V. G may not claim the benefits of Article 12 of the U.S.–X treaty. Under the tax laws of X, G's share of the U.S. source royalty income paid to A is not treated as derived by a resident of X since, under X's tax laws, A, rather than G, is required to account for income received by A. This result occurs even if A distributes the royalty amount immediately after receiving it because, in such a case, G would be taxable on an amount treated as a profit distribution from A and not on royalty income received from sources within the United States. The fact that, for U.S. tax purposes, G is treated as the taxpayer for its allocable share of A's income is not relevant for purposes of determining whether, for purposes of Article 12 of the U.S.–X income tax treaty, G's share of the income paid to A is treated as derived by a resident of X. For this purpose, the laws of Country X govern the determination of whether G meets this condition. On the other hand, H may claim an exemption from U.S. tax on its share of the royalty income received by A under Article 12 of the U.S.–Y treaty because, under the tax laws of Y, H rather than A, is required to account for income received by A. Accordingly, H's share of the U.S. source royalty income paid to A is treated as derived by a resident of Y.

Example 5. The facts are the same as in *Example 4*, except that A is a business organization formed under the laws of a U.S. State as a limited liability

company. The consequences are the same as described in *Example 4*. G is not eligible for benefits under Article 12 of the U.S.–X income tax treaty since, under X's tax laws, A, rather than G, is required to account for income received by A. Under section 881(a), G is liable for U.S. income tax on its allocable share of A's U.S. source royalty income at a 30 percent rate and A must withhold 30 percent from G's allocable share under section 1442. Similarly, H may claim an exemption from U.S. tax on its share of the royalty income received by A under Article 12 of the U.S.–Y treaty because, under the tax laws of Y, H rather than A, is required to account for income received by A.

Example 6. The facts are the same as in *Example 4*, except that A is a so-called dual organized entity. In addition to being organized under the laws of Country V, A has also been organized under the laws of the United States pursuant to the State Z domestication statute. Accordingly, both Country V and the United States regard entity A as a domestic entity existing only in that jurisdiction. Further, Country X and Country Y regard A as a Country V entity. A is treated as a partnership for U.S. tax purposes. The fact that A is a dual organized entity that is regarded differently in Countries X or Y and the United States does not impact the relevant tax treaty analysis. As in *Example 4*, A may not claim the benefit of any income tax treaty since it is not a resident of a country with which the United States has such a treaty. Similarly, G is not eligible for benefits under Article 12 of the U.S.–X income tax treaty since, under X's tax laws, A, rather than G, is required to account for income received by A. Under section 881(a), G is liable for U.S. income tax on its allocable share of A's U.S. source royalty income at a 30 percent rate. Because A is treated as a U.S. partnership for U.S. tax purposes, A must withhold 30 percent from G's allocable share under section 1442. H may claim an exemption from U.S. tax on its share of the royalty income received by A under Article 12 of the U.S.–Y income tax treaty because, under the tax laws of Y, H rather than A, is required to account for the income received by A.

Example 7. The facts are the same as in *Example 5*, except that A distributes all U.S. source royalty income to its interest holders immediately following A's receipt of such income. The consequences are the same as described in *Example 5*. G remains ineligible for benefits under Article 12 of the U.S.–X income tax treaty since, under X's tax laws, A, rather than G, is required to account for the royalty income received by A. The fact that A distributes income on a current basis to G is irrelevant even if Country X taxes G on such distributions on a current basis. Country X regards such distributions to G as a distribution of profits from A to G rather than an item of U.S. source royalty income of G. H remains eligible for benefits under Article 12 of the U.S.–Y income tax treaty with respect to H's allocable share of the U.S. source royalty treatment received by A.

Example 8. The facts are the same as in *Example 5*, except that Country X pursuant to a Country X anti-deferral regime requires that G account for on a current basis as a deemed distribution G's pro rata share of A's net passive income. For purposes of the anti-deferral regime, the U.S. source royalty income of G is regarded as passive income. The consequences are the same as described in *Example 5*. G remains ineligible for benefits under Article 12 of the U.S.–X income tax treaty because, under X's tax laws, A, rather than G, is required to account for the royalty income received by A. The fact that G receives a current deemed distribution of net passive income is irrelevant even if Country X taxes G on such deemed distributions on a current basis. Country X regards such deemed distributions to G as a distribution of profits from A to G rather than an allocation to G of G's share of A's U.S. source royalty income. H remains eligible for benefits under Article 12 of the U.S.–Y income tax treaty with respect to H's allocable share of the U.S. source royalty treatment received by A.

Example 9. (i) *Facts*. Entity A is a business organization formed under the laws of Country X that has an income tax treaty with the United States. A has made a valid election under §301.7701–3(c) of this chapter to be treated as a corporation for U.S. tax purposes and receives royalty income from sources within the United States that is not effectively connected with the conduct of a trade or business in the United States. G, A's sole shareholder, is a corporation organized under the laws of Country X. Under the tax laws of X, A is treated as a fiscally transparent entity and, therefore, G is required to include in income on a current basis its share of A's income. Article 12 of the U.S.–X tax treaty provides that "royalties derived from sources within a Contracting State by a resident of the other Contracting State shall not exceed 5 percent of the gross amount thereof...". Article 4.1 of the treaty provides that for purposes of the treaty, a "'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature...". Article 4.2 of the treaty provides that in the case of income "derived or paid by a partnership...", the term *resident* applies only to the extent that the income derived by such partnership is subject to tax in that State as the income of a resident, either, in its hands or in the hands of its partners.

(ii) *Analysis*. A does not qualify for benefits under the U.S.-X income tax treaty because A is treated as a fiscally transparent entity under the tax laws of X and thus is not a resident of X for purposes of the treaty. G, on the other hand, qualifies for benefits under the U.S.–X treaty with respect to the U.S. source royalty income received by A because, under the tax laws of X, G is required to account for the income received by A on a current basis. This result applies even though, for U.S. tax purposes, A is treated as a corporate entity. Accordingly, the U.S. royalty income paid to A is treated as derived by G, a resident of X, as determined under the tax laws of X. Based on G's qualification for treaty benefits with respect to the U.S. source royalty income, A, as the taxpayer under U.S. tax laws, may claim that the income that it receives for U.S. tax purposes is eligible for benefit under the U.S.–X treaty.

Example 10. The facts are the same as in *Example 9*, except that A is a corporation organized under the laws of a U.S. State and is, therefore, a domestic corporation. A may not claim under the U.S.–X income tax treaty a reduction of the rate of U.S. tax otherwise imposed on its income under section 11. A reduced rate of tax is unavailable under the U.S.–X treaty based upon the savings clause in Article 1 of the U.S.–X treaty. Thus, A remains fully taxable under U.S. tax laws as a domestic corporation.

Example 11. (i) *Facts*. Entity A is a business organization organized under the laws of Country V that has no income tax treaty with the United States. A is treated as a partnership for U.S. tax purposes and receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States. A is directly owned by H and J. J is a corporation organized in Country Z which treats A as fiscally transparent and J as an entity taxable at the entity level. Accordingly, Country Z requires J to include in income on a current basis J's share of A's U.S. source royalty income. H, A's other direct interest holder, is a corporation organized in Country Y. H, in turn is owned by E and F, both of which are entities organized in Country X. E and F are each wholly owned by C which is a corporation organized in Country V. Y treats both A and H as fiscally transparent entities. X treats A, H, and E as fiscally transparent entities. X treats F as an entity taxable at the entity level. Accordingly, X requires F to include in income on a current basis F's indirect share of A's U.S. source royalty income. H and J are treated as corporations for U.S. federal income tax purposes while E, F, and C are treated as partnerships for U.S. federal tax purposes. X, Y and Z each have in effect an income tax treaty with the United States. Article 12 of the U.S.-X and the U.S.–Z income tax treaty provides that royalties paid to a resident of a treaty country from sources within the other may be taxed in both countries but the tax is limited to 5 percent of the gross amount of the royalties in the source country. Article 4.1 of the U.S.–X and the U.S.–Z treaty provides that for purposes of the treaty, a "'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature...". Article 4.2 of the U.S.–X and the U.S.-Z treaty provides that in the case of income "derived or paid by a partnership...", the term *resident* applies only to the extent that the income derived by such partnership is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners. Article 12 of the U.S.–Y treaty provides that "royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State." Article 4.1 of the U.S.-Y treaty provides that, for purposes of the treaty, a "'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature...". The U.S.-Y treaty does not include a provision relating to income paid or derived through a partnership.

(ii) *Analysis*. A may not claim, based on its own status, the benefit of any income tax treaty since it is not a resident of a country with which the United States has such a treaty. This result occurs regardless of how A is treated for U.S. tax purposes or for purposes of the tax laws of Country V. H may not claim the benefits of any treaty, including the benefits of Article 12 of the U.S.–Y treaty, because H does not qualify as a resident of Y or any other treaty jurisdiction. Similarly, neither E nor C may claim the benefits of any income tax treaty, since neither entity qualifies as a resident of X or any other treaty jurisdiction. F, however, may claim the benefit of Article 12 of the U.S.–X treaty with respect to F's indirect share of the U.S. source royalty income received by A. Such income is treated as derived by F, a resident of X, because X qualifies as a resident of X and, under the tax laws of X, F is the first entity in the A, H, F chain that is not itself treated as fiscally transparent in X. J may claim the benefits of Article 12 of the U.S.–Z treaty with respect to J's indirect share of the U.S. source royalty income paid to A because, under the tax laws of Z, J rather than A, is required to account for income received by A. Accordingly, J's share of the U.S. source royalty income paid to A is treated as derived by a resident of Z. As illustrated in this example, the U.S. federal income tax treatment of A, J, H, E, F and C is irrelevant for purposes of determining the extent to which U.S. source royalty income paid to A is eligible for treaty-reduced tax rates under the U.S. income tax treaty with X, Y or Z.

Example 12. (i) *Facts*. Entity A is a business organization formed under the laws of Country X that has an income tax treaty in effect with the United States. A owns all of the stock of a U.S. corporation B. Under the tax laws of X, A is sub-

ject to tax at the entity level. For U.S. tax purposes, A is treated as a branch of its single owner, G. G is a corporation organized under the laws of X. A receives dividends from B that are from U.S. sources and are not effectively connected with the conduct of a trade or business in the United States. Article 10 of the U.S.–X tax treaty provides that "dividends derived from sources within a Contracting State by a resident of the other Contracting State shall not exceed 5 percent of the gross amount thereof...". Article 4.1 of the treaty provides that for purposes of the treaty, a "'resident' of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature...". The U.S.–X treaty contains no provision regarding income paid or derived through a partnership.

(ii) *Analysis*. For U.S. tax purposes, A is treated as a wholly-owned business entity that is disregarded for federal income tax purposes. However, because, under the laws of X and under X's application of the treaty, A is treated as deriving the dividend income as a resident of X, A qualifies for benefits under the treaty with respect to the U.S. source dividend. Thus, G, as the taxable person for U.S. tax purposes, may claim the benefit of a reduced rate under Article 10 of the U.S.–X treaty based on A's eligibility for tax treaty benefits.

(7) *Effective date*. This paragraph (d) applies to amounts paid on or after January 1, 1998.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved June 26, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on June 30, 1997, 12:19 p.m., and published in the issue of the Federal Register for July 2, 1997, 35673).

Part III. Administrative, Procedural, and Miscellaneous

Time for Reporting Transfers to Foreign Entities Under Sections 1491 Through 1494

Notice 97–42

This notice modifies the guidance set forth in Notice 97–18, 1997–10 I.R.B. 35, regarding the time for reporting transfers of property to foreign corporations, partnerships, trusts, or estates as described in section 1491 ("section 1491 transfers").

Background

Notice 97–18 provides guidance with respect to section 1491 transfers occurring after August 20, 1996, that are reportable under section 1494, including the time and manner for reporting such transfers, the manner for making elections pursuant to section 1492, and the penalty imposed by section 1494(c) for failure to report a section 1491 transfer. That notice provides that a U.S. transferor who is required to report a section 1491 transfer may either file Form 926 with the U.S. transferor's annual tax return or information return for the taxable year that includes the date of the transfer or may file Form 926 on the day the transfer is made. Interest must be paid on the amount of excise tax due with respect to the period between the date on which the transfer occurred and the date on which the excise tax is actually paid.

A U.S. transferor can avoid the section 1491 excise tax by making certain elections under section 1492. One election allows a U.S. transferor to avoid the excise tax by electing, before the transfer, to apply principles similar to the principles of section 367. Section 1492(2)(B). Alternatively, a U.S. transferor can avoid the section 1491 excise tax by electing to treat the transfer as a taxable exchange under section 1057. Section 1492(3). Section III.B of Notice 97–18 provides guidance on the time and manner for making these elections.

Section VIII of Notice 97–18 contains a transition provision with respect to the reporting requirements for the U.S. transferor's tax year that includes August 20, 1996. That section provides that no penalties will be imposed under section 1494(c) if a Form 926 reporting a section 1491 transfer (or certain other adequate reporting described in the notice) is filed by the later of the due date of the U.S. transferor's income tax return, including extensions, for the taxable year in which the transfer occurred, or May 9, 1997 (the date that is 60 days after the date that notice was published in the Internal Revenue Bulletin).

This notice extends the time during which certain section 1491 transfers may be reported under that transition provision without the imposition of the section 1494(c) penalty. This notice does not affect the interest that accrues on any excise tax due between the date of the transfer and the date on which the excise tax is actually paid. Moreover, this notice does not extend the time for filing under any duplicative reporting provision described in section II.B of Notice 97–18.

Guidance

With respect to Form 926 for the taxable year that includes August 20, 1996 (the "1996 Form 926"), no penalty will be imposed under section 1494(c) if the taxpayer files the 1996 Form 926 with the taxpayer's timely–filed (including extensions) income tax return or information return for the first taxable year beginning on or after January 1, 1997, provided the taxpayer's income tax return or information return for the tax year that includes August 20, 1996, includes the items of gross income required to be taken into account as a result of an election on the 1996 Form 926 (for example, any gain recognized by the taxpayer as a result of a section 1057 election). Alternatively, no penalty will be imposed under section 1494(c) if the taxpayer files the 1996 Form 926 within the period set forth in Section VIII of Notice 97–18.

The U.S. transferor will be deemed to have made, as the case may be, a section 1492(2)(B) election before the transfer, or a section 1057 election in accordance with Treas. Reg. § 301.9100–12T, if the following requirements are satisfied:

(i) The U.S. transferor otherwise complies with the requirements set forth in Notice 97–18 for making an election under section 1494(2)(B) to apply principles similar to the principles of section 367, or under section 1492(3) for treating the transfer as a taxable exchange under section 1057; and

(ii) With respect to either election, the U.S. transferor's 1996 Form 926 is filed within the time period set forth in this notice.

Effect on Other Guidance

Sections III.B and VIII of Notice 97–18 are hereby modified.

Drafting Information

The principal author of this notice is Michael Kirsch of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Kirsch on (202) 622–3880 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Guidance Regarding Claims for Income Tax Convention Benefits

REG–104893–97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rule-making by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In T.D. 8722, page 4, the IRS is issuing temporary regulations regarding rules for determining whether U.S. source payments made to entities, including entities that are fiscally transparent in the United States and/or the applicable treaty jurisdiction, are eligible for treaty–reduced tax rates. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments and outlines of topics to be discussed at the public hearing scheduled for September 24, 1997, at 10 a.m. must be received by September 3, 1997.

ADDRESSES: Send submissions to: CC: DOM:CORP:R (REG–104893–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–104893–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Elizabeth Karzon, (202) 622-3860; concerning submissions and the hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

T.D. 8722 amends the Income Tax Regulations (26 CFR part 1) relating to section 894. The temporary regulations contain rules relating to eligibility for benefits under income tax conventions for payments to flow–through entities or arrangements.

The text of T.D. 8722 also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 24, 1997, at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by September 3, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Proposed Effective Date

This amendment is proposed to apply to payments received by an entity on or after January 1, 1998.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In §1.894–1, paragraph (d) is added to read as follows:

§1.894–1 Income affected by treaty.

* * * * *

[The text of proposed paragraph (d) is the same as the text of §1.894–1T(d) published in T.D. 8722, page 4.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on June 30, 1997, 12:19 p.m., and published in the issue of the Federal Register for July 2, 1997, 62 F.R. 35755).

Special Rule for U.S. Permanent Residents Receiving Compensation or Pensions From the Government of France

Announcement 97–61

The Competent Authorities of the United States and France have entered into an agreement to alleviate the double taxation of U.S. permanent residents with respect to compensation and pensions for governmental services rendered to the French government. Generally, under the agreement, income of this type received in 1996 is

taxable only in France and income of this type received in 1997 is taxable only in the United States. For 1998 and subsequent years, both the United States and France will tax the income, but the United States will allow a credit for taxes paid to France.

Taxpayers who are otherwise required to file an Individual Income Tax Return on Form 1040 for tax year 1996 should attach the following statement to the return: "I/we am/are not taxable in the United States under Article 19 of the Income Tax Convention between the United States and France on compensation or pension income received in 1996 for services rendered to the French Government that are of a governmental nature, pursuant to a 1997 Competent Authority agreement between the United States and France." A taxpayer who has already filed a 1996 return in accordance with the Competent Authority agreement need not amend the return to include such a statement. A taxpayer who has already filed a 1996 return and paid tax on income subject to the Competent Authority agreement should include this statement if filing a claim for refund.

Contacts

For further information or assistance regarding the U.S. income tax treatment of compensation and pensions received from the Government of France, please contact Calvin Watson, Tax Treaty Division, Office of the Assistant Commissioner (International), ((202) 874–1550 (not a toll-free number)). For information or assistance regarding the French tax treatment of these compensation and pension payments, please contact Noel Claudon, Fiscal Attache, French Embassy, ((202) 944–6390 or (202) 944–6391 (not toll-free numbers)). In France, please contact Centre des Impots des Non-Residents, 9, Rue d'Uzes, 75094 Paris Cedex 02.

Announcement 97–70

Transition Relief for Failures To Make Plan Distributions to Certain Employees or Offer Options To Defer Distributions by April 1, 1997

Purpose

This announcement provides transition relief for qualified plans that fail to make distributions required under the terms of the plan to an employee who attained age 70 1/2 in 1996 and who did not retire in 1996. This relief is conditioned upon the employer meeting specified requirements with respect to such an employee.

Background

Section 401(a)(9) of the Internal Revenue Code ("Code") provides that, in order for a plan to be qualified under section 401(a), distributions from the plan must commence no later than the "required beginning date." Prior to 1997, section 401(a)(9)(C) generally provided that the required beginning date is April 1 following the calendar year in which the employee attains age 70 1/2.

Section 1404(a) of the Small Business Job Protection Act of 1996 ("SBJPA") amended section 401(a)(9) of the Code to provide that, in the case of an employee who is not a 5-percent owner, the required beginning date for minimum distributions from a qualified plan is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2 or the calendar year in which the employee retires. The amendment to section 401(a)(9) applies to years beginning after December 31, 1996.

Notice 96–67, 1996–53 I.R.B. 12, December 30, 1996, Q&A–2, provides that, under section 401(a)(9) as amended by the SBJPA, an employee (other than a 5-percent owner) who attained age 70 1/2 in 1996, but who had not retired from employment with the employer maintaining the plan by the end of 1996, is not required to receive a minimum distribution by April 1, 1997. Such an employee's required beginning date is determined under amended section 401(a)(9), which requires distributions to commence by April 1 of the calendar year following the calendar year in which the employee retires from employment with the employer maintaining the plan.

Many qualified plans continue to contain provisions (consistent with section 401(a)(9) prior to its amendment by the SBJPA) requiring an employee who attains age 70 1/2 in a calendar year to begin receiving distributions by April 1 of the following calendar year.

Announcement 97–24, 1997–11 I.R.B. 24, March 13, 1997, provides that, prior to amending its plan, an employer maintaining a plan is permitted to offer an employee (other than a 5-percent owner) who attains age 70 1/2 in a calendar year after 1995, e.g. 1996, and who does not retire by the end of that calendar year, the option to delay commencement of distributions until no later than April 1 following the calendar year in which the employee retires from employment with the employer. Announcement 97–24 notes that future guidance will provide that an employer that offers this option under a plan must amend the plan retroactively to provide for the option. The retroactive plan amendment must conform the plan to its pre-amendment operation regarding this option to defer distributions until after retirement.

Announcement 97–24 states that it also applies to an employer that has adopted a master or prototype or a regional prototype plan. Announcement 97–24 notes that if a conforming amendment is not an available option under the sponsor's prototype plan document, the required amendment may result in the loss of prototype status.

Transition Relief

Under this announcement, if the requirements described below are satisfied, a plan will not be treated as failing to satisfy the requirements of section 401(a) of the Code merely because the plan fails to make certain distributions required under the terms of the plan to an employee (other than a 5-percent owner) who attained age 70 1/2 in 1996 and who did not retire from employment with the employer maintaining the plan by the end of 1996. The relief in this announcement applies to a plan with respect to distributions required under the terms of the plan to be made to such an employee between August 20, 1996 (the date of enactment of the SBJPA) and December 31, 1997.

This relief is available only if: (1) the employee is offered an option to defer the distribution and elects to defer, or a make-up distribution is paid to such employee, and (2) the employee option or the make-up distribution meets the qualification requirements under section 401(a) of the Code (other than the requirement that a plan operate in accordance with its terms). For example, the employee option or the make-up distribution must satisfy the requirements of sec-

tions 401(a)(11) and 417 (relating to joint and survivor annuities).

If the employer chooses to offer an election to defer, the election to defer must be made by the employee by December 31, 1997. If an employee chooses not to defer, the plan must pay a make-up distribution to the employee in a manner that satisfies the rules set out below.

Whether a make-up distribution from the plan is paid to all employees (other than 5-percent owners) who attained age 70 1/2 in 1996 and who did not retire from employment with the employer maintaining the plan by the end of 1996 or only to any such employee who is offered an election to defer but chooses not to defer, the make-up distribution must be made by December 31, 1997 and must include all of the employee's distributions required under the plan terms up to that date. The make-up distribution must restore to the employee the benefits that the employee would have had if the plan terms had been followed. For example, in the case of a defined benefit plan, the make-up distribution for an employee must be increased to take into account the delayed payment consistent with the plan's actuarial adjustments.

Further, future guidance will provide that an employer who offers the option to defer described above under a plan must amend the plan retroactively, no later than the date specified in that guidance, to provide for the option. The retroactive plan amendment must conform the plan to its preamendment operation regarding the option to defer commencement of benefits. However, a plan will not fail to satisfy this operational requirement merely because the amendment provides for an employee to have the option to either commence distribution by April 1, 1997 or to defer distribution beyond that date but, in operation, the plan provided for an election to defer or make-up distributions in accordance with this announcement.

This announcement also applies to an employer that has adopted a master or prototype or a regional prototype plan. Such an employer should note that if a conforming amendment is not an available option under the sponsor's prototype plan document, the required amendment may result in the loss of prototype status.

Availability of Publication 1542, Per Diem Rates (Revised May 1997)

Announcement 97–*71*

Publication 1542, recently updated, is now available from the Internal Revenue Service.

The publication gives the maximum per diem rate employers can use without treating part of the allowance as wages for tax purposes. It also provides the listing of localities eligible for $166 per diem amount under the high-low substantiation method.

You can get a copy of this publication by calling 1–800–829–3676. You can also write to the IRS Forms Distribution Center nearest you.

If you have access to a personal computer and modem, you also can get the publication electronically. You can get the publication at:

1) World Wide Web-http://www.irs.ustreas.gov,
2) FTP-ftp.irs.ustreas.gov, and
3) IRIS at FEDWORLD–(703) 321-8020.

Deletions From Cumulative List of Organizations Contributions to Which Are Deductible Under Section 170 of the Code

Announcement 97–*72*

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 21, 1997, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Kinaman Animal Shelter
Erie, PA

Don Stewart Association
Phoenix, AZ

St. Matthews Publishing, Inc. f/k/a Church and Bible Study in the Home by Mail, Inc.
Los Angeles, CA

Washington Institute for Policy Studies
Seattle, WA

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspensions from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Newman, Harry J.	Covington, VA	CPA	Indefinite from May 16, 1997
Sehnert, Fred	Dallas, TX	CPA	Indefinite from May 16, 1997
Gaskins, John D.	Valdosta, GA	CPA	Indefinite from May 16, 1997
Turner, Charles L.	Goshen, KY	Attorney	Indefinite from May 16, 1997
Thornton Jr., Kenneth W.	Murrells Inlet, SC	Attorney	Indefinite from May 16, 1997
Kellogg, Richard	White Hall, AR	CPA	Indefinite from May 16, 1997
Stec, Albert J.	Schereville, IN	CPA	Indefinite from May 16, 1997
Huff Jr., James G.	Raleigh, NC	CPA	Indefinite from May 16, 1997
Seall, William	Dayton, OH	Attorney	Indefinite from May 16, 1997
Brunner, L. Keith	Centerville, OH	Attorney	Indefinite from May 16, 1997
Bart, David R.	Oakwood, OH	Attorney	Indefinite from May 16, 1997
Shafer, David A.	Franklin, OH	CPA	Indefinite from May 16, 1997
Schouman, James	Milford, MI	Attorney	Indefinite from May 16, 1997
Jones, Milo A.	Greensboro, NC	CPA	Indefinite from May 16, 1997
Dolan, Gary L.	Lincoln, NE	Attorney	Indefinite from May 16, 1997
Coorey, Edward T.	Hampton, NH	Enrolled Agent	Indefinite from May 16, 1997
Sheehan, Thomas J.	Maggie Valley, NC	CPA	Indefinite from May 16, 1997
Millonig, Arthur F.	Dayton, OH	Attorney	Indefinite from May 16, 1997
McHaffie, Richard T.	St. Paul, MN	Attorney	Indefinite from June 4, 1997
Rigler, Michael	Gainesville, TX	CPA	Indefinite from June 4, 1997
Hopkins, Diane E.	St. Paul, MN	Attorney	Indefinite from June 4, 1997
Adae, F. Brian	Barrington, RI	Attorney	Indefinite from June 4, 1997

Announcement of the Consent Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Padgett, John	Orleans, MA	Attorney	May 22, 1997 to October 21, 1998
Crisp, Jerry W.	Dallas, TX	CPA	June 1, 1997 to May 31, 2000
Kessel, Donald K.	Export, PA	CPA	June 1, 1997 to November 30, 1998
Klimchak, Joseph	Aliquippa, PA	CPA	June 1, 1997 to February 28, 1998
Steele, Lewis M.	Pittsburgh, PA	CPA	June 1, 1997 to May 31, 1998
Castleberry, Gene A.	Oklahoma City, OK	Attorney	June 4, 1997 to August 3, 1997
O'Connor, Paul J.	Hanover, MA	CPA	June 6, 1997 to June 5, 2000
Olshan, Robert M.	Washington, DC	CPA	June 10, 1997 to December 9, 1998
Johnson, Kirk L.	Ann Arbor, MI	CPA	July 1, 1997 to June 30, 1999
Mattutat, Stephen	Elicott City, MD	CPA	July 1, 1997 to March 31, 1998
Trenary, Lloyd R.	Oklahoma City, OK	CPA	August 1, 1997 to March 31, 1998
Ritchey Jr., Ferris	Birmingham, AL	Attorney	August 1, 1997 to July 31, 2000
Gold, Howard G.	Hamden, CT	CPA	August 1, 1997 to July 31, 1999
Womack, Kathleen	Hammond, LA	CPA	August 1, 1997 to July 31, 1999

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedral Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

Bulletins 1997–27 through 1997–28

Announcements:

97–67, 1997–27 I.R.B. *37*
97–68, 1997–28 I.R.B. *13*
97–69, 1997–28 I.R.B. *13*

Delegation Orders:

172 (Rev. 5), 1997–28 I.R.B. *6*

Notices:

97–37, 1997–27 I.R.B. *4*
97–38, 1997–27 I.R.B. *8*
97–39, 1997–27 I.R.B. *8*
97–40, 1997–28 I.R.B. *6*
97–41, 1997–28 I.R.B. *6*

Railroad Retirement Quarterly Rate:

1997–28 I.R.B. *5*

Revenue Procedures:

97–27, 1997–27 I.R.B. *9*

Revenue Rulings:

97–27, 1997–27 I.R.B. *4*
97–28, 1997–28 I.R.B. *4*
97–29, 1997–28 I.R.B. *4*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

Finding List of Current Action on Previously Published Items[1]

Bulletins 1997–27 through 1997–28

*Denotes entry since last publication

Revenue Procedures:

96–42
Superseded by
97–27, 1997–27 I.R.B. *9*

[1] A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

Notes

Notes

INTERNAL REVENUE BULLETIN

The Introduction on page 3 describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page (www.irs.ustreas.gov) or write to the IRS Bulletin Unit, T:FP:F:CD, Room 5560, 1111 Constitution Avenue NW, Washington, DC 20224. You can also leave a recorded message 24 hours a day, 7 days a week at 1–800–829–9043.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300

INTERNAL REVENUE BULLETIN

The Introduction on page 3 describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page (www.irs.ustreas.gov) or write to the IRS Bulletin Unit, T:FP:F:CD, Room 5560, 1111 Constitution Avenue NW, Washington, DC 20224. You can also leave a recorded message 24 hours a day, 7 days a week at 1–800–829–9043.

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

First Class Mail
Postage and Fees Paid
GPO
Permit No. G–26

Official Business
Penalty for Private Use, $300

Superintendent of Documents Publications and Subscriptions Order Form

New Deposit Account?

Order processing code: *3119

Check here ☐

NOTE: All prices include regular domestic postage and handling. Subscription prices are subject to change at any time. International customers, please add 25%. To fax your orders (202) 512–2250.

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	021-066-00909-2	Subject Bibliography listing Cum. Bulletins prior to 1988 SB-066	FREE	FREE
	048-004-02277-0	Cum. Bulletin 1988-1 (Jan-June)	$42	
	048-004-02279-6	Cum. Bulletin 1988-2 (July-Dec)	$41	
	048-004-02291-5	Cum. Bulletin 1988-3	$40	
	048-004-02286-9	Cum. Bulletin 1989-1 (Jan-June)	$44	
	048-004-02292-3	Cum. Bulletin 1989-2 (July-Dec)	$40	
	048-004-02295-8	Cum. Bulletin 1990-1 (Jan-June)	$38	
	048-004-02300-8	Cum. Bulletin 1990-2 (July-Dec)	$41	
	048-004-02305-9	Cum. Bulletin 1991-1 (Jan-June)	$44	
	048-004-02309-1	Cum. Bulletin 1991-2 (July-Dec)	$45	
	048-004-02310-5	Cum. Bulletin 1992-1 (Jan-June)	$51	
	048-004-02317-2	Cum. Bulletin 1992-2 (July-Dec)	$47	
		Total for Publications		

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	N-914	Priority Announcements for Accountants	FREE	FREE
	IRB	Internal Revenue Bulletin	$123	
		Optional—Add $50 to open new Deposit Account and please check box in upper right corner		
		Total Cost of Order		

FUTURE EDITIONS of Internal Revenue Cumulative Bulletins are available through "STANDING ORDER SERVICE." Get these future editions—automatically—without having to initiate a purchase order.

AUTHORIZATION FOR STANDING ORDER SERVICE

I hereby authorize the Superintendent of Documents to charge my:

☐ VISA, ☐ MasterCard, or ☐ Superintendent of Documents Deposit Account for the Standing Order item below selected and shipped to me.

Authorizing signature (Standing Orders not valid unless signed.)

Please print or type your name.

Office Phone Number (_____) _____

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

GPO DEPOSIT ACCOUNT

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of $50 you can establish your GPO Deposit Account.

☐ **YES!** Open a Deposit Account for me so I can order future publications quickly and easily. I'm enclosing the $50.00 initial deposit.

FREE Priority Announcement Service

You can find out about new publications for tax practitioners and accountants—as they are released—through our FREE Priority Announcement Service. See above.

For privacy protection, check the box below:

☐ Do not make my name available to other mailers

Check method of payment:

☐ Check payable to Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) 4/93

Purchase Order No. _____

(If purchase order included.)

Please type or print

(Company or Personal Name)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA, or MasterCard account. Or open a Deposit Account with an initial deposit of $50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped.

Standing Orders remain in effect until canceled in writing (telephone cancellations are accepted but must be followed up with a written cancellation within 10 days) or canceled by the Superintendent of Documents.

Service begins with the next issue released of each item selected. An acknowledgment card is sent for each Standing Order item selected.